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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

BANKERS INSURANCE COMPANY,

Defendant and Appellant.

F077399

(Super. Ct. No. CV61463)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tuolumne County. Donald I. Segerstrom, Jr., Judge.

Law Office of John Rorabaugh, John Mark Rorabaugh and Crystal Rorabaugh for Defendant and Appellant.

Laura Leslie Krieg, District Attorney, and Stephanie H. Novelli, Deputy District Attorney, for Plaintiff and Respondent.

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A surety and its bail agent appeal the trial court's entry of summary judgment on the surety's forfeited bail bond. Surety and bail agent contend the trial court had no

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\* Before Franson, Acting P.J., Smith, J. and DeSantos, J.

jurisdiction when it entered the summary judgments because the clerk of court failed to provide the surety and bail agent notice of a forfeiture.

Under Penal Code section 1305, subdivision (a)(1),<sup>1</sup> when a criminal defendant released on bail fails to appear without sufficient excuse, the trial “court shall in open court declare forfeited the undertaking of bail.” Next, “the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety [and bail agent].” (§ 1305, subd. (b)(1).) The surety shall be released of all obligations under the bond if the clerk fails to mail the notice of forfeiture in accordance with section 1305 within 30 days after the entry of the forfeiture. (§ 1305, subd. (b)(3).)

Here, the trial court stated in open court on October 7, 2016, that bail was forfeited and then stayed the revocation of bail. No notice of the forfeiture was mailed to the surety or bail agent. This failure to provide notice violated section 1305, subdivision (b)(1). Furthermore, notice of the forfeiture declared on October 21, 2016, did not cure the violation. The statutory notice violation resulted in the trial court losing jurisdiction and the surety being released of all obligations under the bail bond. Consequently, the surety’s motion to vacate forfeiture and exonerate the bond should have been granted.

We therefore reverse the summary judgment granted on the bond.

### **FACTS & PROCEEDINGS**

On July 9, 2016, Bankers Insurance Company, through its agent All Pro Bail Bonds (collectively, Surety), posted a bail bond (No. 555157133-0) in the amount of \$50,000 for the release of defendant William Lon Todd. On September 23, 2016, Todd was present in court and obtained a continuance to October 7, 2016. The reporter’s transcript of the October 7, 2016, proceeding states in full:

“THE COURT: I have a Mr. Todd; William Todd. Is that your case?”

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<sup>1</sup> All unlabeled statutory references are to the Penal Code.

“MS. NOVELLI: Your Honor, Mr. Todd had appeared on four previous times to hire his own attorney.

“THE COURT: Well, it is now five to noon. Mr. Todd has not appeared for further arraignment with his counsel. [¶] Court will order his bail be forfeited, bench warrant will issue. Bail will be set at \$50,000.00

“THE CLERK: I received an e-mail about Mr. Todd.

“THE COURT: Will that change my order?

“THE CLERK: It said Defendant William Todd called this morning and noticed the Court he was just released from the hospital as he had severe food poisoning and is unable to make it to court this morning.

“THE COURT: All right. [¶] I will stay the revocation of his bail. [¶] Let’s make it October 18th. Let’s put it on—was it on for prelim or arraignment?

“MS. NOVELLI: Further arraignment.

“THE COURT: Let’s put it on Friday, October 21st at 8:30.”

The minute order for the October 7, 2016, hearing stated: “Defendant having failed to appear, the Court orders: Bench Warrant: Fail to Appear to issue, bail set at \$50,000.00. Execution of warrant stayed until October 21, 2016. [¶] DEFENDANT CALLED IN AND REQUEST WARRANT TO BE HELD [¶] BAIL BOND IS ORDERED FORFEITED AND STAYED UNTIL THE NEXT HEARING.” The clerk of court did not mail a notice of forfeiture to Surety.

The reporter’s transcript of the October 21, 2016, proceeding states in full:

“THE COURT: William Todd. William Lon Todd. [¶] All right, I held the warrant. The defendant had called in last time and asked that a warrant be held.

“And he’s not here, so the warrant that was—let’s see, the order forfeiting bail and issuing a bench warrant, the stay on those orders will be lifted, and a bench warrant—wait a second. That happened on the 21st. Is there bail on that? No, no.

“Yeah, it will be a 50,000—I’ve already—Judge Boscoe already issued an \$50,000 bench warrant, so bail is forfeited and a \$50,000 bench warrant will be issued for the arrest of William Lon Todd.”

An amended minute order of the hearing stated the bail bond was ordered forfeited and the court ordered the issuance of a bench warrant for the failure to appear. Notice of entry of forfeiture of bail was filed October 26, 2016, and mailed by the clerk of court to Surety the next day. The notice stated: “You are hereby notified that the above-named defendant having failed to appear on October 21, 2016, your surety bond in the amount shown above was ordered forfeited.” The notice made no mention of the proceedings on October 7, 2016.

In May 2017, the trial court granted Surety’s unopposed motion to extend the appearance period. In October 2017, Surety filed a motion to vacate forfeiture and exonerate bail. The district attorney filed an opposition to the motion. Surety filed a reply brief and the district attorney filed a supplemental opposition. The matter was heard by the trial court on November 13, 2017. At the close of argument, the court denied the motion. On December 5, 2017, Surety filed a notice of appeal. Summary judgment on the bond was entered on December 18, 2017.

## DISCUSSION

Over the past decade, this court has published many bail bond opinions providing an overview of the statutory scheme governing bail bonds, the principles applied when construing the statutes, and the standards of appellate review.<sup>2</sup> Here, the parties’ briefs

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<sup>2</sup> *People v. The North River Ins. Co.* (2018) 31 Cal.App.5th 797 (order reimbursing county’s extradition expenses from exoneration of bond affirmed); *People v. United States Fire Ins. Co.* (2015) 242 Cal.App.4th 991 (prematurely entered summary judgment reversed; trial court directed to exonerate bond); *People v. Accredited Surety Casualty Co.* (2014) 230 Cal.App.4th 548 (surety did not establish good cause to extend exoneration period; summary judgment affirmed); *People v. United States Fire Ins. Co.* (2012) 210 Cal.App.4th 1423 (county could not recover attorney fees for successfully opposing motion to vacate forfeiture of bail); *People v. Accredited Surety & Casualty Co.* (2012) 207 Cal.App.4th 163 (trial court had jurisdiction to declare forfeiture of bond after defendant failed to appear at mental competency hearing); *People v. Western Ins. Co.*

amply demonstrate their familiarity with the statutes and decisional law establishing the legal context for the specific legal questions presented. Consequently, this opinion does not provide an overview of general principles. Instead, we state our assumptions on issues that are not dispositive, frame the legal issues that are dispositive, and explain our answers to those issues.

First, we assume trial courts have the inherent authority to stay a forfeiture of bail. Second, we assume the circumstances of this case were sufficient to justify an order staying the forfeiture on October 7, 2016. Third, we assume the trial court actually stayed the forfeiture of bail on October 7, 2016. With respect to the standard of review, the legal issues decided are subject to our independent (i.e., de novo) review. (*People v. International Fidelity Ins. Co.*, *supra*, 204 Cal.App.4th at p. 592.)

#### I. NOTICE OF FORFEITURE

The parties' contentions and the foregoing assumptions present us with the question of whether the surety and bail agent were entitled to notice of the October 7, 2016, forfeiture of bail, even though that forfeiture was stayed? As explained below, we conclude the relevant statutory provisions entitled them to notice of the October 7, 2016, forfeiture.

Section 1305, subdivision (a)(1) provides that when a criminal defendant released on bail fails to appear without sufficient excuse, the trial "court shall in open court declare forfeited the undertaking of bail." Under section 1305, subdivision (b)(1), "the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety [and bail agent]." This notice of forfeiture of bail is mandatory, must be

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(2012) 204 Cal.App.4th 1025 (exoneration period not equitably tolled during extradition process); *People v. International Fidelity Ins. Co.* (2012) 204 Cal.App.4th 588 (bail bond exonerated by operation of law; summary judgment on bond reversed); *People v. Accredited Surety & Casualty Co., Inc.* (2012) 203 Cal.App.4th 1490 (defendant's incarceration in another county did not toll exoneration period; summary judgment on bond affirmed).

provided to both the surety and the bail agent, and such notice is regarded as a jurisdictional prescription. (*County of Orange v. Lexington National Insurance Co.* (2006) 140 Cal.App.4th 1488, 1493 (*Lexington*).) For example, in *County of Los Angeles v. Financial Casualty & Surety, Inc.* (2016) 247 Cal.App.4th 875 (*Financial Casualty*), the court stated, “because the trial court did not mail notice after the first forfeiture was declared in open court, it lost jurisdiction over the bond.” (*Id.* at p. 883; see § 1305, subd. (b)(3).)

“The surety and bail agent are entitled to *separate* notice under the statute *every* time a forfeiture is declared.” (*Lexington, supra*, 140 Cal.App.4th at p. 1493, italics added.) An underlying purpose of the notice requirement is to alert the surety when its bond is in danger of being forfeited, which allows the surety to choose what action to take. (*Id.* at p. 1492.)

The statutory text does not mention *staying* a forfeiture of bail and, as a result, the text does not expressly state the notice requirement does not apply when a forfeiture is stayed. We will not modify the text by inferring the existence of such an exception to the notice requirement because the bail statutes must be strictly construed in favor of the surety to avoid the harsh result of forfeiture. (*People v. The North River Ins. Co., supra*, 31 Cal.App.5th at p. 804; see Code Civ. Proc., § 1858 [interpreting statutes].) The general principles governing notice and the construction of the bail statutes support our conclusion that notice of forfeiture is required, even when the forfeiture is stayed. This construction promotes the statutory purpose of giving sureties the opportunity to consider all factors potentially producing an increased risk. (See *People v. Wilshire Ins. Co.* (1975) 46 Cal.App.3d 216, 220, fn. 1.)

The recent decision in *People v. Bankers Ins. Co.* (2019) 36 Cal.App.5th 543, involved a bond that was declared forfeited and, during the same court session, was properly reinstated by the trial court. (*Id.* at p. 549.) It did not involve an order staying a forfeiture and, consequently, did not address the issues presented in the present case.

As an alternative to its argument that notice was not required, respondents argue that the notice requirement was satisfied by the notice of the October 21, 2016, forfeiture. We disagree.

Assuming a single notice document could cover multiple forfeitures, the notice of the October 21, 2016, forfeiture does not refer to the October 7, 2016, forfeiture. Therefore, despite the fact the notice of the October 21, 2016, notice was mailed within 30 days of the first forfeiture, that document cannot be construed as notifying Surety of the forfeiture declared on October 7, 2016. Consequently, we conclude the notice describing the October 21, 2016, forfeiture did not satisfy the statutory requirement for providing notice of the October 7, 2016, forfeiture.

## II. CONSEQUENCES OF FAILURE TO PROVIDE NOTICE

Subdivision (b)(3)(A) of section 1305 states the surety “shall be released of all obligations under the bond” when the clerk of court “fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture.” This statutory provision controls the outcome in this appeal and requires the reversal of the summary judgment. It is well established that the failure to follow the notice prescriptions in section 1305 renders a summary judgment on the bail bond void. (*Lexington, supra*, 140 Cal.App.4th at p. 1493; *People v. Ranger Ins. Co.* (1996) 51 Cal.App.4th 1379 [based on irregularities in giving notice, summary judgment was set aside and the bail bond exonerated]; *People v. Wilshire Ins. Co., supra*, 46 Cal.App.3d at p. 221 [failure to give the notice of forfeiture invalidated the bond and rendered the judgment void].) Even technical violations of the bail bond statutes are not tolerated because the statutory requirements are considered inviolable, and reversal does not depend on whether a party has suffered prejudice. (*People v. Bankers Ins. Co.* (2009) 171 Cal.App.4th 1529, 1532.)

Accordingly, the failure to mail a notice describing the October 7, 2016, forfeiture caused the trial court to lose jurisdiction over the bond. It follows that Surety's motion to vacate forfeiture and exonerate the bond should have been granted. (§ 1305, subd. (b)(3)(A).)

#### **DISPOSITION**

The judgment is reversed. The matter is remanded to the trial court for entry of an order vacating the forfeiture of bail and exonerating the bond. Surety shall recover its costs on appeal.